

tinct as to render them altogether unfit to be associated in one suit.

STEWART and NELSON, for the Complainant.

ALEXANDER CAMPBELL and JOHNSON, for Defendants.

JAMES T. CONNER AND OTHERS  
 vs.  
 ANNA MARIA OGLE, EX'X  
 OF BENJAMIN OGLE AND OTHERS.

DECEMBER TERM, 1848.

[CONSTRUCTION OF WILL—ORPHANS COURTS, THEIR POWERS, &C.—EXECUTORS  
 AND TRUSTEES.]

A TESTATRIX devised her estate real and personal to trustees in trust to "apply the rents and profits thereof to the support and maintenance of her daughter during her life, and to the support and maintenance, and education of her children," "and after her death in trust, for her children to be equally divided amongst them." The daughter at the date of this will, and death of the testatrix had four children by her then husband, who died during the life of the testatrix. She subsequently married again, and had by her second husband five children. HELD—

- 1st. That under this will the children of the daughter by the second marriage, as well as those by the first are entitled to maintenance and education out of the interest of the trust fund during the life of the daughter, and to a distributive share of the principal after her death.
- 2d. The provision for maintenance and education commences from the birth of each child or the death of the testatrix and continues during its minority, or until its marriage, if a female, or the death of its mother.
- 3d. The representatives of such of the deceased children to whom none of the interest of the trust fund was paid for their support and maintenance, are entitled to an account for the sum which should have been paid to them.
- 4th. The trustee appointed under this will, might have performed all the duties of the trust without an application to a court of equity.
- 5th. A decree of the Court of Chancery, passed under the act of 1785, ch. 72 sec. 4, appointing the trustee named in the will, trustee for the sale of the real estate devised by the will, invested him with all the power which he would have had under the will, and imposed upon him the same obligations by which he would have been bound by the will.
- 6th. The trustee having paid into court the proceeds of the real estate, in pursuance of the order of the Chancellor, he is not responsible afterwards to any person who may establish a claim to them, as he acted under the authority of a court of competent jurisdiction.